HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

8th Report of Session 2023–24

Drawn to the special attention of the House:

Draft Electoral Commission Strategy and Policy Statement

Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2023 and one linked instrument

Correspondence: Updates on Maritime legislation from DfT and on Food Promotion from DHSC

Includes information paragraphs on:

Draft Carer's Leave Regulations 2024

Draft East Midlands Combined County Authority Regulations 2024

Draft European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2023

Draft Magistrates' Courts Act 1980 (Automatic Online Conviction and Standard Statutory Penalty) (Specification of Offences and Penalties) Regulations 2024

Draft Post Office Network Subsidy Scheme (Amendment) Order 2024

Draft Registered Office Address (Rectification of Register) Regulations 2024

Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment)Order 2024

Iran (Sanctions) Regulations 2023 and two linked instruments

Civil Procedure (Amendment No. 4) Rules 2023

Serious Disruption Prevention Orders: Draft Statutory Guidance

Flexible Working (Amendment) Regulations 2023 and one linked instrument

Money Laundering and Terrorist Financing (Amendment) Regulations 2023

Asylum Support (Amendment) Regulations 2023 and one linked instrument

Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023

Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023 and one linked instrument

Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 and one linked instrument

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Secondary Legislation Scrutiny Committee

The Committee's terms of reference, as agreed on 17 July 2023, are set out on the website but are, in summary:

To report on draft instruments and memoranda laid before Parliament under section 23(1) of the European Union (Withdrawal) Act 2018 and sections 11, 12 and 14 of the Retained EU Law (Revocation and Reform) Act 2023.

And, to scrutinise –

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in the terms of reference.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

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Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/publications/

Committee Staff

The staff of the Committee are Jen Mills (Clerk), Philipp Mende (Adviser), Chris Smith (Adviser), Jane White (Adviser) and Riona Millar (Committee Operations Officer).

Further Information

Further information about the Committee is available at https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/

The progress of statutory instruments can be followed at https://statutoryinstruments.parliament.uk/

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at http://www.legislation.gov.uk/uksi

Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hlseclegscrutiny@parliament.uk.

Eighth Report

DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Electoral Commission Strategy and Policy Statement

Date laid: 14 December 2023

Parliamentary procedure: affirmative

This draft Statement sets out the strategic and policy priorities of the Government in relation to the functions of the Electoral Commission ("the Commission") and describes the Commission's role and responsibilities in enabling the Government to meet those priorities. The draft Statement includes guidance to which the Commission must have regard when exercising its functions. The Government says that the Statement "seeks to ensure greater accountability to the UK Parliament on how the Electoral Commission discharges its functions", arguing that this will increase public confidence in the Commission's work. It is clear from the statutory consultation process, however, that there are questions about the necessity and appropriateness of the Statement and concerns about its impact on the Commission's operational independence. We note, in particular, that the Speaker's Committee on the Electoral Commission, the body responsible for holding the Commission to account on behalf of Parliament, objects to the draft Statement as "not fit for purpose and inconsistent with the Commission's role as an independent regulator". While we are not in a position to adjudicate on these opposing views, ***we note the strength of the objections to the draft Statement and regret that the Government is taking forward the draft Statement against the opposition of the Speaker's Committee. The House may wish to press the Minister for a compelling justification for the Government's approach.***

The draft Strategy and Policy Statement is drawn to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.

1. The draft Electoral Commission Strategy and Policy Statement (the "Statement") has been laid before Parliament by the Department for Levelling Up, Housing and Communities (DLUHC). The draft Statement sets out the strategic and policy priorities of the Government relating to elections, referendums and other matters in respect of which the Electoral Commission ("the Commission") has functions. It also describes the role and responsibilities of the Commission in enabling the Government to meet those priorities and includes guidance in relation to the Commission's functions to which the Commission must have regard. The Government's policy priorities in the draft Statement include: tackling electoral fraud; addressing weaknesses in the current absent voting arrangements; improving the accessibility of elections; and supporting participation.

Accountability arrangements for the Commission and role of the Statement

2. The Commission was established by the Political Parties, Elections and Referendums Act 2000 ("PPERA") as the independent regulator responsible for ensuring that elections and referendums are run effectively and lawfully, for registering political parties and for regulating donations to and the spending

of political parties. Its functions are set out in PPERA and the Elections Act 2022 ("the Act"). The Commission is independent of government and accountable to Parliament via the Speaker's Committee on the Electoral Commission ("Speaker's Committee"), which was also established by PPERA. The Speaker's Committee is chaired by the Speaker of the House of Commons. Its current membership consists of the Speaker, four MPs of opposition parties and five Conservative MPs, including the Secretary of State and two other ministers of DLUHC, but only two DLUHC ministers may attend at a time.[1]

3. The Act empowers the Secretary of State to designate a Strategy and Policy Statement for the Commission. This instrument is the first use of this power. The Act also requires the Commission to have regard to the Statement when exercising its functions. The Government says that the Statement "seeks to ensure greater accountability to the UK Parliament on how the Electoral Commission discharges its functions", arguing that this will increase public confidence in the Commission's work.

4. Under the Act, the Speaker's Committee may assess the Commission's performance of its duty to have regard to the Statement, and the Commission is required to report on what it has done in relation to the Statement 12 months after the Statement was first designated and every 12 months thereafter, in addition to, or as part of, its existing annual reporting requirements. The Speaker's Committee may choose to report on the Commission's performance as part of the Speaker's Committee's yearly reporting requirement.

Statutory consultation and parliamentary procedure

5. The development of the draft Statement was subject to a two-stage statutory consultation process. As required by PPERA, the Secretary of State consulted the Commission, the Speaker's Committee and the House of Commons Levelling Up, Housing and Communities Committee ("the Levelling Up Committee") on an initial draft of the Statement. This first consultation took place between 22 August and 20 December 2022, with responses received from the statutory consultees as well as from the House of Commons Public Administration and Constitutional Affairs Committee and the Association of Electoral Administrators.

6. The Department revised the draft Statement in light of the feedback received during this first consultation and, as required under PPERA, laid a revised Statement before Parliament, together with an explanation of the proposals and the Government's response to the first consultation. For a period of 60 days (from 8 June to 14 September 2023) Members of both Houses were able to make representations on the revised draft Statement and consultation report. The Government received representations from the Speaker's Committee and the Chair of the Levelling Up Committee during this second consultation.

7. As required under PPERA, the Secretary of State then laid the final draft of the Statement before Parliament, alongside the Government's response to

1 See: https://committees.parliament.uk/committee/144/speakers-committee-on-the-electoral-commission/membership/.

the representations received during the second consultation.[2] The final draft must now be approved by a resolution of each House within a 40-day period before the Secretary of State may designate the Statement.

8. As the draft Statement only contains provisions regarding the non-devolved functions of the Commission, the Devolved Administrations were not consulted.

Concerns raised about the draft Statement and the independence of the Commission

9. According to the Department, the Statement "does not seek to interfere with the governance of the Commission" which "remains operationally independent". DLUHC says that the legal duty to have regard to the Statement "does not replace or undermine the Commission's other statutory duties or give the government powers to direct the Commission's decision making", adding that while the Statement articulates "the Government's view of factors the Commission should have regard to", Commissioners and the Commission's executive leadership "remain responsible for determining how the Commission exercises its functions". This includes "determining the Commission's strategy, priorities, how it should discharge its duties (including day-to-day operations) and the allocation of its resources, as agreed by the relevant parliaments". The Department says that, in practice, the duty means that when carrying out its functions, the Commission will be required to consider this Statement and "weigh it up against any other relevant considerations", and that it will be for the Commission to determine how to factor the Statement into its decision-making processes and corporate documents such as the Five-Year Plan.

10. We note, however, that the introduction of the Statement and the requirement on the Commission to have regard to it have been controversial from the beginning. During the House of Lords second reading debate of the Elections Bill ("the Bill"), for example, concerns were raised about the provision which empowers the Secretary of State to designate a Statement for the Commission, specifically that such a government-drafted Statement could "interfere" with the Commission's independence.[3] Similarly, when scrutinising the Bill, the House of Lords Select Committee on the Constitution expressed concern about the desirability of introducing a government-initiated Statement, stating that this could "risk" the independence of the Commission and "be dangerous if the perception were to emerge that the Commission is beholden to the Government for its operation and delivery".[4]

11. DLUHC explains in the Explanatory Memorandum that the Government made changes in response to the concerns raised during the passage of the Bill, including "explicitly preventing" the Statement from making any provision regarding the Commission's investigatory and enforcement functions in relation to individual cases and requiring the Secretary of State to have regard to the Commission's statutory duties when preparing the Statement.

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2 Department for Levelling Up, Housing and Communities and the Electoral Commission, 'Final draft Electoral Commission strategy and policy statement' (14 December 2023): https://www.gov.uk/government/publications/final-draft-electoral-commission-strategy-and-policy-statement [accessed 15 January 2024].

3 See Elections Bill Lords second reading: HL Deb, 23 February 2022, col 244 [Lords Chamber].

4 Select Committee on the Constitution, *13th Report* (Session 2021–22, HL Paper 164), paras 35 to 44.

12. We note, however, that the statutory consultees still objected to the draft Statement during the two-stage consultation process. In its response to the revised draft Statement from September 2023,[5] the Speaker's Committee welcomed that the Government had made "some substantive improvements to the revised draft Statement in response to some of our concerns" during the first consultation. However, the Committee expressed concern that "the Government believes the most serious flaws do not warrant changes" even though these flaws had been identified "in concert by us, the Electoral Commission, and the Levelling Up, Housing and Communities Committee". These flaws relate to the rationale for designating the Statement, the extent to which the Statement will facilitate more effective parliamentary scrutiny of the Commission, the potential for the Statement to undermine the independence of the Commission and the appropriateness of the Government using the Statement to provide guidance to the Commission.

13. The Speaker's Committee found that the revised draft Statement remained "not fit for purpose and inconsistent with the Commission's role as an independent regulator". In particular, the Speaker's Committee criticised that the Government had "not offered a cogent explanation of what it is seeking to resolve through the Statement", and that the Government's consultation response "betrays a misguided perception that the Commission is—or ought to be—to some extent, under Government control". The Speaker's Committee concluded that:

> "[D]esignation of a Statement is a power the Government *may* use, rather than one it *must* use. Nothing in the Government's consultation response changes our conclusion that the draft Statement is neither necessary at this time, nor likely to assist the Commission in its pursuit of the aims and objectives already approved by the Speaker's Committee and adopted by the Commission.
>
> […] As we also noted in our consultation response, the power of the Speaker's Committee to hold the Commission accountable for its duty to have regard to that Statement is also optional. Were the Government to proceed to designate a Statement which we consider not fit for purpose, we would need to consider carefully what account we could take of such a Statement, and whether we could legitimately hold the Commission to account for their duty in relation to it.
>
> […] We cannot support this revised draft Statement, and invite the Government to rethink whether a Statement is needed at all. […] If the Government proceeds to designate this Statement, substantively unchanged, we invite both Houses to heed these concerns, and consider the final Statement carefully during the 40-day approval period."

14. Given this opposition to the draft Statement, we asked the Department about the role of the Secretary of State and DLUHC ministers on the Speaker's Committee and whether they had excused themselves from the discussions of the draft Statement. The Department told us:

> "In terms of discussions on the [Statement] itself, the Speaker's Committee's representation on the Statement was approved at a meeting on 4 September 2023. Ministers voluntarily did not attend

5 The Speaker's Committee on the Electoral Commission, Response to the draft Strategy and Policy Statement for the Electoral Commission, 3rd Report 2023, HC 1809.

> this meeting given its primary focus was for the Speaker's Committee to approve its response to the Government's Statement. This allowed non-government members of the Speaker's Committee to deliberate freely about the content of that response. However, that is not to suggest that it is inappropriate for Government members to attend meetings where the Statement or the Commission's performance are discussed more generally, as they have often done in the past and as intended by Parliament."

15. The Levelling Up Committee concluded in its 2022 report on the initial draft Statement that "no Statement is necessary at the current time", and that "no evidence has been provided justifying it".[6] The Chair of the Levelling Up Committee reiterated this criticism in a letter[7] to the Speaker's Committee on the revised draft Statement:

> "In summary, the Committee considers that the changes do not alter its view of the Statement […] For the most part the Statement reads as though the Commission were an arm of Government. The Commission is not a government body, and its independence is—as is agreed by all stakeholders—critical to its effective functioning. Any perception that the Commission is being influenced to favour the governing party in exercising its functions could seriously damage public confidence in the democratic process. […]
>
> The Government may have attempted to extricate itself from some of the problems identified with the first draft Strategy and Policy Statement but it has failed, and the new approaches it has tried have let it back into the same quagmire: this reconfirms our Committee's belief that the Statement will not "bring any tangible benefits to the exercise of the Commission's functions that would outweigh the serious disadvantages outlined"."

16. The Commission emphasised in its response[8] to the initial draft Statement that:

> "The Government should make clear how its statements on priority setting are consistent with the Commission's independence and with the Act. In particular, it should be clear that the Commission should not be fettered in the exercise of those of its statutory duties that are not covered in the statement and that the Commission remains free to prioritise and resource those other functions in accordance with its independently agreed plans."

17. Given the strength of these objections, we asked for further explanation of the rationale for introducing the Statement and about the value that

6 House of Commons Levelling Up, Housing and Communities Committee, *Draft Strategy and Policy Statement for the Electoral Commission*, (4th Report, Session 2022–23, HC 672).

7 House of Commons Levelling Up, Housing and Communities Committee, 'Letter from the Chair to the Speaker's Committee on the Electoral Committee concerning the draft Strategy and Policy Statement for the Commission' (26 June 2023): https://committees.parliament.uk/publications/40636/documents/198144/default/ [accessed 15 January 2024].

8 Electoral Commission, 'Response to the UK Government consultation on a draft Strategy and Policy Statement for the Electoral Commission' (16 September 2022): https://www.electoralcommission.org.uk/news-and-views/our-responses-consultations/response-uk-government-consultation-a-draft-strategy-and-policy-statement-electoral-commission [accessed 15 January 2024].

the Statement will add to the existing accountability arrangements for the Commission. The Department responded that:

> "Throughout the passage of the Elections Bill and since the Act passed, the Government has set out a consistent and clear rationale for the Statement. The Statement is intended to enhance the Electoral Commission's accountability to Parliament whilst respecting its operational independence.
>
> Before the Elections Act, the Commission was already accountable to the Speaker's Committee. However, the Committee's limited statutory remit meant it was only responsible for scrutinising the Commission's finances and corporate plans. Lord Pickles' report in 2016[9] was clear that the existing system of oversight by the Speaker's Committee did not provide an effective third-party check on the Commission's performance. While some may have a high level of confidence in how the Commission already exercises some of its functions, others may disagree. For example, the Public Administration and Constitutional Affairs Committee's report into "The Work of the Electoral Commission" in 2022[10] identified several areas for improvement, including the support the Commission provides to parties and campaigners and the way the Commission secures compliance with and enforces political finance laws. The Committee's report listed elements of the draft Statement that addressed those concerns and that it recommended be maintained in the final iteration. The final draft [of the Statement] laid before Parliament on 14 December 2023 does retain those elements.
>
> In order to provide for a more effective third-party check on the performance of the Electoral Commission, section 13ZA of PPERA (as inserted by section 17 of the Elections Act 2022) gives the Speaker's Committee an expanded role to examine the performance of the Electoral Commission in relation to its duty to have regard to the Statement. Once the Statement is designated, the Speaker's Committee will have the opportunity to consider the Commission's actions across a range of areas relevant to the Statement. By improving the accountability of the Commission to the UK Parliament, the Statement will increase public confidence in its work.
>
> The draft Statement sets out the Commission's role in supporting the Government's determination to tackle issues such as voter fraud, to improve the accessibility of elections and to increase participation. These are important aims and ones it would be wholly appropriate for an electoral regulator to support. The Statement can also provide useful guidance for the Commission to consider in areas where primary legislation is not explicit and the Commission is exercising a significant amount of discretion."

18. Responding to the representations made by the Speaker's Committee, the Government took the view that the objections of the Speaker's Committee and others had "either been addressed previously or cannot be satisfied by

9 Lord Pickles, 'Securing the Ballot: Review into electoral fraud' (August 2016): https://assets.publishing.service.gov.uk/media/5a8058bd40f0b62305b8a9d3/eric_pickles_report_electoral_fraud.pdf [accessed 15 January 2024].

10 House of Commons Public Administration and Constitutional Affairs Committee, *The Work of the Electoral Commission* (2nd Report, Session 2022–23, HC 462).

amending the Statement without compromising significantly its intended effect". The Government acknowledged, however, that "the Statement must always be compatible with the foundational principle of respecting the Commission's operational independence", adding that "the Commission will only be required to have regard to the Statement in the exercise of its functions. This legal duty does not replace or undermine the Commission's other statutory duties or give the government powers to direct the Commission's decision making."

Conclusion

19. It is clear that there are opposing views on the appropriateness and necessity of the draft Statement and concerns about its impact on the Commission's operational independence. We note, in particular, that the Speaker's Committee, the body responsible for holding the Commission to account on behalf of Parliament, objects to the draft Statement as "not fit for purpose and inconsistent with the Commission's role as an independent regulator". While we are not in a position to adjudicate on these opposing views, **we note the strength of the objections to the draft Statement and regret that the Government is taking forward the draft Statement against the opposition of the Speaker's Committee. The House may wish to press the Minister for a compelling justification for the Government's approach.**

Immigration and Nationality (Fees) (Amendment) (No. 3) Regulations 2023 (SI 2023/1359)

Statement of changes in Immigration Rules (HC 246)

Dates laid: 7 and 13 December 2023

Parliamentary procedure: negative

Amongst other changes, this Statement of Changes in Immigration Rules and associated Regulations introduce new criteria for a family member of a 'stateless person' to be able to join that person in the UK. In particular, under the new rules, such family members will ordinarily have to pay the standard application fees for immigration applications and the Immigration Health Surcharge, and meet other criteria including suitability, English language and financial requirements. A submission we have received describes the changes as making the criteria "far more stringent" and significantly diminishing the rights of stateless persons in the UK. However, the Home Office argues that the intention is to promote consistency across immigration application routes.

We summarise below a number of the points raised in the submission, and the Home Office's responses to our resulting questions. In most of the areas, it is not our role to take a view on the merits of the arguments, although, consistent with our previous comments, ***we do believe that guidance in one significant area should have been published alongside the legislation. We also expect the Home Office to publish further information on the impact of the changes and on stateless applications more generally. The House may wish to probe further on these points and in other areas discussed below.***

This Statement of Changes and associated Regulations are drawn to the special attention of the House on the ground that they are politically or legally important or give rise to issues of public policy likely to be of interest to the House.

Background

20. Amongst other changes to the immigration rules, **HC 246** introduces a new appendix that deals with stateless persons, who are people not considered a national of any country. Stateless persons may be granted leave to remain in the UK if they cannot leave voluntarily or be removed because they have no right of permanent residence elsewhere. Prior to these changes coming into force, stateless persons were covered by Part 14 of the Immigration Rules.

21. In practice, the changes mainly affect partners and children of people who have been recognised as stateless. Under the current system, family members of stateless persons can be granted leave to enter or remain in the UK alongside the stateless person, whether or not they are themselves also stateless. Following the changes, this will no longer be the case. Instead, family members will be required to apply under 'Appendix FM', which is the general set of rules for family members applying to join those already living legitimately in the UK.

22. **SI 2023/1359** introduces changes to immigration fee rules consequent on the Statement of Changes; for example, to remove family members of stateless people from the scope of the exemption to relevant immigration fees.

23. We received a joint submission from Asylum Aid and the Liverpool Law Clinic on the changes relating to stateless persons. The submission is published in full on our website.[11] We raised a number of questions arising from the submission with the Home Office. These questions, and the Home Office's responses, are summarised below and the full exchanges are available alongside the submission on our website.

Settlement criteria for family members of stateless persons

24. One implication of the changes is that dependents of stateless persons will (unless they make a successful application for a fee waiver) have to pay the standard fees for immigration applications, and the Immigration Health Surcharge (IHS). Family members of stateless persons were previously exempt from all such charges. The submission we received notes that, following recent announcements, both immigration fees and the IHS have increased, or will shortly increase, significantly.[12] The submission argues that these additional costs mean that an application under Appendix FM "will be prohibitively expensive for a significant number of family members of Stateless Persons: a total of £4,643 in fees per person every 30 months". While fee waivers are available, the submission contends that the bar for these to be granted is "extremely high" and "it may take weeks or even months to obtain a decision".

11 'Scrutiny evidence' webpage: https://committees.parliament.uk/committee/255/secondary-legislationscrutiny-committee/publications/8/scrutiny-evidence/.

12 Immigration and Nationality (Fees) (Amendment) (No. 2) Regulations 2023 (SI 2023/1004), which we drew to the special attention of the House in *55th Report* (Session 2022–23, HL Paper 263), paras 65-89; and Draft Immigration (Health Charge) (Amendment) Order 2023, drawn to the special attention of the House in *5th Report* (Session 2023–24, HL Paper 24), paras 1-20.

25. In addition to the fees and costs, the new system will ordinarily require family members of stateless persons, if not stateless themselves, to meet other criteria that do not currently apply, including suitability, English language and financial requirements. For partners, the financial requirements would include the minimum income threshold, which will also be significantly increased following recent announcements.[13] The submission argues that, in combination, these changes introduce criteria for acceptance of an application that are "far more stringent" than those currently in place.

26. We put these points to the Home Office, which disputed the characterisation of the changes as introducing "far more stringent" criteria. The Home Office said instead that the policy change "will achieve greater consistency across immigration routes to the UK". We note that it is possible for both views of the policy to be correct.

27. The Explanatory Memorandum (EM) to the Statement of Changes did not include any impact information that might have helped to assess the practical effect of the changes; for example, the current number of applications from family members of stateless persons and the acceptance rate, compared with estimates of these numbers after the changes come into force. The EM to 2023/1359 said only that "as the volumes of individuals affected by this legislation are small, the impacts, including financial impacts, are expected to be minimal". When we asked the Home Office further about impacts, it replied that "we do not currently publish statistics on the number of stateless applications or decisions, but we plan to include this in future data releases". **We note that this may be too late to assess the effects of the change; the House may wish to press the Minister on whether there is any further information that can shed light on this question. We welcome the Home Office's commitment to publishing statistics in the future.**

Position of children who are not themselves stateless

28. The submission argues that there is a "significant omission" in the new rules, which results in children who are not themselves stateless, but whose parents are stateless, having no route to apply to join or remain with their parents. The submission states that this arises because children may only apply for entry clearance or leave to remain if one of their parents is also applying for, or has received, permission under Appendix FM, but, in the future, stateless parents will be applying under the new Appendix Statelessness.

29. In response to our questions on this, the Home Office agreed that for a child to meet the "core requirements" in Appendix FM, the parent must have permission under Appendix FM. However, the Home Office said that "where the child does not meet the core requirements, the caseworker will consider whether there are exceptional circumstances", including whether a refusal would breach the right to family life under the European Convention on Human Rights (ECHR) (The exceptional circumstances test is discussed further below.) **Again, it would be helpful in understanding the effects of the change if the Home Office published statistics and analysis in this area.**

13 Home Office, 'Net migration measures—further detail' (21 December 2023): https://www.gov.uk/government/news/fact-sheet-on-net-migration-measures-further-detail [accessed 12 January 2024].

Identity requirements

30. A new aspect of the rules requires a stateless person to 'establish their identity' before their application for leave to remain can be considered. The submission argues that this is not compatible with the policy intention of providing protection to stateless people, particularly given that the only appeal route on this aspect of the rules is via Judicial Review, and given that stateless people are "very likely to have no personal identity documentation". The Home Office stated that the new requirement to "satisfactorily" establish identity differs from the usual immigration requirement, which is to provide a passport or other travel document, and that this difference reflects the difficulty that stateless applicants may have in providing a document. The Home Office also said that it retains discretion to accept applications as valid where one or more of the validity criteria is not met; and that guidance will set out how stateless applicants without documents can meet the requirement. The Home Office stated that this guidance will be published on the day that the new rules come into force (31 January 2024), **but, as we have said previously,[14] guidance relating to significant areas of the policy should be available at the time the legislation is laid before Parliament.**

Permitted length of stay

31. Under the previous system, a partner of a stateless person who successfully applies to join them would be granted permission to stay for five years, following which they could apply for settled status. Under the new system, a successful applicant would normally be granted permission for 30 months, after which they would need to reapply (with associated costs), before being eligible for settled status after five years.

Exceptional circumstances

32. If an applicant does not meet the standard criteria, they may still be granted permission if there are "exceptional circumstances", such as that refusal would breach the person's rights under Article 8 of the ECHR (the right to respect for private and family life).[15] The submission stated that, in practice, the "vast majority" of family members of stateless persons are unlikely to meet the new criteria, by the nature of being in such a position, and would, therefore, need to rely on exceptional circumstances. In response to this point, the Home Office said:

> "As Appendix Statelessness does not come into force until the 31 January, we do not know the proportion of applicants who will not meet the core criteria. We anticipate that some dependants of a stateless person may not be able to meet the financial or English language requirements and will need to rely on an Article 8 exceptional circumstances test under Appendix FM."

33. **We expect information on the application of the exceptional circumstances test to be included in the data that the Home Office has said it plans to publish on stateless persons.**

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14 For example, see *1st Report* (Session 2023–24, HL Paper 3), paras 23–34.

15 There is existing guidance on the application of the exceptional circumstances test, at: Home Office, 'Family Policy: Family life (as a partner or parent) and exceptional circumstances' (15 May 2023): https://assets.publishing.service.gov.uk/media/6464f2b8d3231e000c32db8a/Family_life__as_a_partner_or_parent__and_exceptional_circumstances.pdf [accessed 15 January 2024].

34. We also note that if an applicant is accepted based on exceptional circumstances, they would be able to settle only after a 10-year qualifying period, with associated costs for reapplications every 30 months in the meantime.

Breaches of human rights conventions

35. The submission includes a number of arguments asserting that the policy changes more widely are incompatible with the ECHR and other relevant international conventions. In response to our questions in this area, the Home Office said:

> "We are confident our changes are compatible with international obligations such as the UN Statelessness Conventions and the ECHR. A caseworker must consider for example whether refusal would breach Article 8 ECHR as part of an Appendix FM application, therefore there is still a path for families to reunite or stay together. We separately engaged with interested stakeholders and sought legal advice in advance of laying Appendix Statelessness."

We note the Home Office's response, but are not in a position to take a view as questions of legality are outside the scope of this Committee.

Conclusion

36. This Statement of Changes and associated fees instrument introduce changes to the regime governing stateless persons, including strengthening the criteria that need to be met to allow family members to join an existing stateless person in the UK.

37. A submission we have received argues that the changes "significantly diminish the rights of stateless persons in the UK". A number of the issues arising from the submission are summarised above. **In general, these are not questions on which it is appropriate for us to take a view, but they may indicate areas in which the House might wish to probe further. We also expect the Home Office to review the effects of the changes and to publish the results of such reviews, as well as to begin to publish regular statistics on stateless applications.**

CORRESPONDENCE: UPDATES ON MARITIME LEGISLATION FROM DFT AND FOOD PROMOTION FROM DHSC

Maritime updates

38. We have frequently highlighted the Department for Transport's (DfT) backlog of Maritime legislation, some of which was more than twenty years overdue for implementation.[16] Our 53rd Report of Session 2022–23 also expressed concern that DfT was not going to meet its own 'end of 2023' deadline for addressing that backlog.[17]

39. Part of DfT's proposed remedy, to prevent future items for transposition from accumulating, was to introduce "ambulatory references" into its regulations—that is, adding a cross-referencing provision that automatically updates UK legislation every time the relevant international legislation is amended. Because this approach takes those legislative changes out of the normal scrutiny process, DfT also undertook to inform Parliament every time such an update was made.

40. We are grateful that Lord Davies of Gower, the current Minister for Maritime, International and Security, has written to inform us that one such set of changes took effect on 1 January 2024. The Department will also inform the House by means of a written Ministerial statement (WMS). **We are surprised that the WMS has not yet been published**, and are therefore, exceptionally, publishing the Minister's letter in full in Appendix 1 for the benefit of the House.

Food Promotion

41. Our 7th Report of this session[18] included correspondence on the *Food (Promotion and Placement) (England) (Amendment) Regulations 2023* with the current Minister, the Rt Hon. Dame Andrea Leadsom DBE MP, to accompany a revised Explanatory Memorandum (EM).

42. Regrettably we remained dissatisfied with the EM's quality and there was a further exchange of correspondence, which is published in Appendix 2.

16 See for example *21st Report* (Session 2017–19, HL Paper 88) and *17th Report* (Session 2019–21, HL Paper 73), which included correspondence setting out the size of the backlog and how DfT was planning to address it.

17 Correspondence section of the *53rd Report* (Session 2022–23, HL Paper 260).

18 *7th Report* (Session 2023–24, HL Paper 36); see also *55th Report* (Session 2022–23 HL Paper 263), which drew these Regulations to the special attention of the House on the ground that the Explanatory Memorandum was inadequate.

INSTRUMENTS OF INTEREST

Draft Carer's Leave Regulations 2024

43. The purpose of these draft Regulations is to implement a new statutory entitlement to Carer's Leave from 6 April 2024 for employees who look after a dependant with a long-term care need. According to the Department for Business and Trade (DBT), the leave will be available to all employees who meet the eligibility conditions regardless of how long they have worked for their employer. Under the new arrangements, up to a week of unpaid leave may be taken as individual days or half-days over a 12-month period. Employees will not be required to provide evidence when requesting Carer's Leave, and they will enjoy the same employment protections as exist for other forms of family related leave, such as Maternity Leave, including protection from dismissal or detriment as a result of having taken the leave. As employment law is reserved for Scotland and Wales but devolved to Northern Ireland, the new Carer's Leave arrangements will only be available in Great Britain. DBT says that it would be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.

Draft East Midlands Combined County Authority Regulations 2024

44. These draft Regulations propose to implement the East Midlands devolution deal, establishing a combined county authority for the local government areas of Derby City, Derbyshire, Nottingham City and Nottinghamshire and a Mayor of the East Midlands. The new body would be chaired by the Mayor and be known as the East Midlands Combined County Authority (EMCCA). The draft Regulations set out the functions to be exercised by the EMCCA and by the Mayor respectively, with the first mayoral elections to take place on 2 May 2024.

45. We note that during the statutory public consultation on the proposed governance arrangements, 2,032 respondents (48%) supported the proposals, whilst 2,206 (52%) were opposed. The Department for Levelling Up, Housing and Communities (DLUHC) says that the Secretary of State has noted respondents' concerns about the EMCCA's governance model and the position of a Mayor but is satisfied that these draft Regulations would "provide the necessary check and balances on the governance of the EMCCA and its Mayor". According to DLUHC, the constituent councils support the new powers and duties and have consented to the Regulations being made.

Draft European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2023

46. Due to repeated errors by the Foreign, Commonwealth and Development Office (FCDO), this is the fifth occasion on which the House has been asked to consider the same issue–the granting of standard diplomatic immunities to officials of certain space-related organisations so that the UK may ratify a treaty.[19]

19 HM Government, *Agreement between the United Kingdom and the European Space Agency concerning the European Space Agency's Sites and Facilities in the United Kingdom, signed in Glasgow on 16th July 2013*, CP 121 (June 2019): https://assets.publishing.service.gov.uk/media/5d02123740f0b609a87a859c/MS_21.2019_Euro_Space_Agency.pdf.

47. Our report on the fourth iteration[20] summarised the errors up to that point:

> "One instrument was replaced because of procedural error and three because of policy errors that should have been resolved before the instrument was laid before Parliament. This sorry tale represents a considerable waste of the time of both the House of Lords, which has already debated the previous version, and its scrutiny committees."

48. Although that 2018 version was made as SI 2018/787, it still did not implement all the immunities correctly and, as a result, the treaty has not been ratified. FCDO told us that the error was identified in mid-2018 but its correction was delayed by the requirement to prioritise other legislation for Brexit, COVID-19, and then sanctions connected with the conflict in the Ukraine. Although FCDO says that there has been no actual detriment to the seven individuals involved, this unfortunate series of events casts doubt on FCDO's competence in drafting effective legislation.

Draft Magistrates' Courts Act 1980 (Automatic Online Conviction and Standard Statutory Penalty) (Specification of Offences and Penalties) Regulations 2024

49. The Judicial Review and Courts Act 2022 introduced a new Automatic Online Convictions and Penalties (AOCP) procedure, under which, for specified offences, adult defendants who plead guilty would be given an option of accepting a conviction and financial penalty online without the involvement of a magistrate. AOCP is intended to save court time, allow magistrates to focus on more serious cases and help deliver swifter justice. These draft Regulations would set the three offences for which AOCP will be available and the applicable level of fines, compensation and Victim Surcharge. These would be:

- Failure to produce a valid ticket for travel on a train: fine £66.
- Failure to produce a valid ticket for travel on a tram and certain local railways: fine £80.
- Fishing without a rod fishing licence: fine £123.

50. These levels of fines have been set at the median of those currently imposed for each offence group. For all three offences, the maximum compensation payable would be £10 and the Victim Surcharge would be 40% of the fine.

51. We were concerned about whether, as part of the AOCP process, the defendant will receive adequate warnings, in plain language, about the serious consequences of a guilty plea, which include that they would then have a conviction for dishonesty. The Ministry of Justice (MoJ) reassured us that adequate warnings will be given. It said that similar arrangements would apply as in the Single Justice Procedure (SJP), which is an existing fast-track process that allows one magistrate to determine the case 'on the papers' rather than at a hearing. However, we note that the AOCP is an even faster procedure because it omits the involvement of a magistrate altogether, and that part of the role of a magistrate is to ensure that the defendant fully understands the process in which they are involved.

20 *26th Report of Session 2017–19* (Session 2017–19, HL Paper 125).

52. MoJ estimates that only 1,420 cases per year would initially be covered by AOCP. However, MoJ says that a review will be undertaken within two years. **We expect part of this review to cover the fairness of the procedure, including in light of there being no magistrate involvement at all, and for this to be published before there is any expansion of the offences that can be dealt with under AOCP.**

Draft Post Office Network Subsidy Scheme (Amendment) Order 2024

53. This Order would raise the legislative cap on funds that can be provided to the Post Office under the Post Office Network Subsidy Scheme from £500 million to £750 million in any period of twelve months beginning on 1 April. According to the Department for Business and Trade (DBT), the additional funding is required because of further costs arising from the Horizon sub-postmaster scandal and due to "broader economic conditions". DBT describes these conditions as recent Royal Mail industrial action, changing consumer behaviours following the pandemic, and the impact of costs of living pressures on consumer confidence arising from inflation and high energy and supply chain costs.

54. DBT says that raising the cap will ensure that there is "no legislative barrier to providing essential funding to maintain the functions of the Post Office", while sufficient funding will also be available to compensate the victims of the Horizon scandal. Asked whether the Department would legislative again to raise the cap further, should more funding be required beyond the new cap after the recent announcement regarding compensation for those affected by the Horizon scandal,[21] DBT said that "overall we're still confident that a cap of £750m is sufficient". The Department explained:

> "We believe a new cap of £750 million for any given financial year covers all reasonable scenarios for the company for the foreseeable future and mitigates the risk of seeking to change the limit again. The figure was calculated by assessing Post Office's potential funding profile and attaching appropriate risk to each item to take account of uncertainties. While there could theoretically be a need to change the cap in the future, we consider this to be very unlikely in the medium term."

Draft Registered Office Address (Rectification of Register) Regulations 2024

55. These draft Regulations seek to strengthen the processes for dealing with the "hijacking" of individuals' residential addresses for use as registered office addresses by companies, often for criminal purposes. There are frequent reports in the media of cases where an innocent party has found that a company with which they have no involvement has misappropriated their residential address and filed it with Companies House in order to meet the statutory requirement of providing a registered office address.

56. The Department for Business and Trade says that there have been regular calls for more action to be taken to help victims. Building on the Economic Crime and Corporate Transparency Act 2023 which introduced a duty on companies to ensure that they are always registered at an "appropriate address", this instrument proposes to:

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21 Ministry of Justice, 'Government to quash wrongful Post Office convictions' (10 January 2024): https://www.gov.uk/government/news/government-to-quash-wrongful-post-office-convictions [accessed 15 January 2024].

- enable the registrar to act unilaterally and without giving notice in advance to change a company's registered office address, where the registrar is satisfied that the registered office address is not an "appropriate address";
- give the registrar flexibility to determine the length of the objection period in cases where the registrar considers it necessary to provide an opportunity for the company to object to a proposed change of the address;
- criminalise a company and its officers in default where, having had its registered office address changed to a default address, the company does not change it to an appropriate address within the specified compliance period; and
- empower the registrar to strike off the register (and thereby dissolve) a company which squats at a default address beyond the compliance period, even if it is not reasonable to believe the company is defunct.

Draft Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2024

57. This Order would make the Sunni Islamist political organisation Hizb ut-Tahrir, including its UK branch, a proscribed terrorist organisation in the UK. It is a criminal offence to belong to or invite support for a proscribed organisation. The Home Office states that Hizb ut-Tahrir, although describing itself as non-violent, "promotes and encourages terrorism", has praised the Hamas terrorist attacks on Israel of 7 October 2023 and has an "antisemitic ideology". The Home Office also says that the group's activities since the Hamas attacks have "served to exacerbate heightened community tensions". The Home Office states that, having taken advice, including from the cross-Government Proscription Review Group, proscription of Hizb ut-Tahrir is a proportionate response.

Iran (Sanctions) Regulations 2023 (SI 2023/1314)

Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023 (SI 2023/1364)

Russia (Sanctions) (EU Exit) (Amendment) (No.5) Regulations 2023 (SI 2023/1367)

58. These three made affirmative instruments amended the UK sanctions regimes in Iran and Russia respectively, with immediate effect. While the Explanatory Memorandum (EM) provided in each case accurately described what the individual regulations did, we needed to ask the Foreign, Commonwealth and Development Office (FCDO) multiple questions to understand how the changes contributed to the overarching policy objective. We also asked for an assessment of how effective the previous sanctions regulations had been, so we could understand why the current additions were necessary. **We are grateful to the FCDO for having already revised all three EMs so that those participating in the required debates may also benefit from the additional information, but remind the department that our intervention should not have been necessary.**

Civil Procedure (Amendment No. 4) Rules 2023 (SI 2023/1397)

59. These Rules set out the legal procedures that apply to the use of State Threats Prevention Investigation Measures (STPIMs). STPIMs were established under the National Security Act 2023 and are intended to combat the evolving threat from hostile activity by states. STPIMs are closely modelled on the pre-existing Terrorism Investigation and Prevention Measures (TPIMs) which cover terrorist threats posed by individuals. The Rules ensure that the proceedings relating to STPIMs are identical to those for TPIMs, except in "minor respects" that do not have any impact on court procedure.

60. The procedures for both TPIMs and STPIMs include provision for 'closed material', the disclosure of which would be contrary to the public interest. For example, there may be closed proceedings at which the intended recipient of an STPIM and their legal representative cannot be present. The Secretary of State may also withhold closed material from the recipient of an STPIM, although such material must be disclosed to the court and to the special advocate (a person appointed to represent the recipient's interests in such circumstances).

Serious Disruption Prevention Orders: Draft Statutory Guidance

61. The Public Order Act 2023 ("the Act") introduced Serious Disruption Prevention Orders (SDPOs), which are court orders that impose prohibitions and requirements on individuals with the aim of preventing serious disruption caused by protest activity. This draft guidance provides operational guidance for the police in relation to SDPOs; for example, on applying for an order, managing those subject to SDPOs and taking enforcement action.

62. The Explanatory Memorandum (EM) to the draft guidance states that "there is no statutory requirement for consultation on the guidance". The Home Office told us that the contents had been agreed by the Crown Prosecution Service, HM Courts and Tribunals Service and the National Police Chiefs Council, but that wider consultation was not necessary because the police are "the sole intended audience" for the guidance and because it "isn't introducing or suggesting anything new, it's merely explaining how […] the Act should be used". While the police will put the guidance into practice, the contents of it have implications for others; for example, those potentially subject to SDPOs and their legal representatives. **A wider consultation may therefore have been appropriate.** Further, the EM contains no information on the impact of the measures. The Home Office referred us to the Impact Assessment (IA) for the Act (when a bill),[22] which contained data on, for example, the expected: number of SDPOs (400 per year); court costs (£290,000 per year); and impact on prisons (18 custody sentences per year of three months each). **This is useful information, and it should have been summarised in the EM, with a link to the IA.**

Draft Code of Practice on Requests for Flexible Working

Flexible Working (Amendment) Regulations 2023 (SI 2023/1328)

63. These two pieces of secondary legislation make changes to the way employees may make a request for flexible working in Great Britain. **SI 2023/1328**

22 Home Office, 'Public Order Bill: Impact Assessment' (10 May 2022): https://publications.parliament.uk/pa/bills/cbill/58-03/0008/Impact%20Assessment%20-%20Public%20Order%20Bill%20-%2017May22.PDF [accessed 15 January 2024].

revokes the current requirement for an employee to have been continually employed for a period of at least 26 weeks before they are entitled to request flexible working, so that from 6 April 2024 an employee will have the right to make a request from the first day of employment. According to the Department for Business and Trade, this will bring an estimated 2.2 million more employees in scope of the entitlement. The Department emphasises, however, that employers will still have the right to reject flexible working requests on grounds of extra cost.

64. To support the implementation of the new entitlement and further changes made by the Employment Relations (Flexible Working) Act 2023, including a new requirement for employers to consult with an employee before rejecting a request for flexible working, the Advisory, Conciliation and Arbitration Service (Acas) has updated its statutory **Code of Practice**. The aim of the Code is to provide employers and employees with a clear explanation of the law on the right to request flexible working, alongside good practice advice on handling requests in a reasonable manner.

Money Laundering and Terrorist Financing (Amendment) Regulations 2023 (SI 2023/1371)

65. This instrument responds to concerns about the 'debanking' of 'politically exposed persons' (PEPs), who are individuals entrusted with prominent public functions, such as politicians and senior members of the military. The Regulations clarify that the enhanced due diligence checks on PEPs that financial institutions are required to undertake must be lighter if the person is a domestic PEP (for example, having a public function in the UK) than a non-domestic PEP. HM Treasury (HMT) states this reflects the lower risk of money laundering and terrorist financing posed by domestic PEPs. The policy already exists in guidance. The Regulations implement a provision in the Financial Services and Markets Act 2023 to transfer the arrangements into legislation, which HMT says was a response to "longstanding concerns among PEPs that some financial institutions do not fully apply the […] guidance on the treatment of PEPs as intended".

Asylum Support (Amendment) Regulations 2023 (SI 2023/1372)

Immigration and Asylum (Provision of Services or Facilities) (Amendment) Regulations (SI I2023/1373)

66. These two sets of Regulations amend certain allowances that are available to support people in the asylum system who would otherwise be destitute. **SI 2023/1372** increases the weekly cash allowance that asylum seekers and their dependants generally receive if they are in self-catered accommodation, from £47.39 per person to £49.18 (+3.8%). The Regulations also increase other additional payments; for example for pregnant women and children under three. **SI 2023/1373** similarly increases these additional payments for failed asylum seekers and their dependants until they are able to leave the UK. The weekly allowance for failed asylum seekers in self-catered accommodation is not set in legislation, but the Home Office is amending it separately to remain in line with that for asylum seekers.

67. Those in both cohorts in catered accommodation receive a lower payment. Again, the rate is not set in legislation, but the Home Office is separately amending it. In contrast to the self-catered rate, the catered allowance is decreasing, from £9.58 to £8.86 per week (-7.5%). The changes to both the

uncatered and catered support rates reflect the use of a new methodology, relying on a ‘disaggregated Consumer Price Index (CPI)’ that is intended to reflect the cost of meeting essential needs. The Home Office told us that the reduction in catered support payments corrects previous changes, which used the overall CPI, and resulted in an overestimate of these costs.

Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023 (SI 2023/1398)

68. The Financial Services and Markets Act 2023 (“the Act”) allows HM Treasury (HMT) to disapply or modify financial services regulations in the area of Financial Market Infrastructure (FMI), which includes services such as clearing, settling and recording financial transactions. The aim of this part of the Act is to allow the testing of new approaches to regulating innovative activities in a controlled environment, known as a ‘sandbox’. These Regulations are the first use of this power and create a ‘Digital Securities Sandbox’ (DSS), to permit trials of technologies that facilitate digital assets, including distributed ledger technology, in performing FMI activities.

69. As well as setting out the rules being applied and modified, the Regulations also specify the activities in scope of the DSS, the eligibility criteria for participating in the trial and the arrangements for supervising and winding down the sandbox. Regulators will have the power to cancel, modify or suspend the activity of a sandbox entrant if it appears necessary or expedient. HMT will report to Parliament on the operation of the DSS by 10 January 2028.

Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023 (SI 2023/1402)

Health and Social Care Act 2008 (Regulated Activities) (Amendment) (No 2) Regulations 2023 (SI 2023/1404)

70. These instruments aim to reverse one of the enduring consequences of the COVID-19 lockdown by making it a condition of Care Quality Commission registration that those who run care homes, hospitals and hospices facilitate visits to residents and “do not discourage” their visits outside the facility. (The requirement does not apply to certain facilities, such as detoxification units). **We are particularly pleased to note that SI 2023/1402 is accompanied by a ‘de minimis’ assessment of its effects,**[23] which provides an excellent overview of the factors taken into account, many of which are not easily quantifiable in financial terms but are clearly beneficial to patients.

71. **SI 2023/1404** simplifies the approval process for the volunteers who assist in such visits by removing the requirement for them to provide a full employment history, as the Department of Health and Social Care states that there are other checks in place which contribute more effectively to safeguarding, such as Disclosure and Barring Service checks and references.

23 Department of Health and Social Care, ‘Regulatory de minimis assessment – Visiting in care homes, hospitals, and hospice’ (December 2023): https://www.legislation.gov.uk/uksi/2023/1402/pdfs/uksiod_20231402_en_001.pdf [accessed 15 January 2024].

Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023 (SI 2023/1407)

Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) (Amendment) Order 2024 (SI 2024/33)

72. These two instruments are part of the legislative package needed to implement the ban on XL Bully dogs.[24] Under the ban, owning or looking after an XL Bully dog will be prohibited in England and Wales from 1 February 2024. Individual owners will need to arrange for a vet to euthanise the dog unless they have obtained an exemption certificate allowing them to keep the dog.[25] Owners may claim compensation for any dogs euthanised voluntarily before 31 January 2024.

73. **SI 2023/1407** establishes an additional exemption scheme for rehoming organisations for XL Bully dogs that they already owned on 31 October 2023 ("the cut-off date"). If an exemption is granted under the scheme, the rehoming organisation is allowed to keep the dog rather than have it euthanised. The exemption scheme sets out several requirements, including that dogs will have to be neutered and that rehoming organisations will need to have sufficient staff to care for the dogs. **SI 2024/33** amends SI 2023/1407 to allow rehoming organisations to apply for an exemption certificate for any dog that they took into their care after 31 October 2023 but before 31 December 2023. It also extends the deadline for applications by one week to 22 January 2024.

74. It is regrettable that this second instrument was needed less than a month after the initial instrument which set up the exemption scheme for rehoming organisations was laid. The Department for Environment, Food and Rural Affairs (Defra) says that the second instrument was necessary because the cut-off date was not announced prior to the publication of SI 2023/1407 and in response to "some practical considerations faced by rehoming centres". This suggests that the ban on XL Bully dogs may not have been thought through properly at the beginning, and that the Department is now having to legislate quickly—in breach of the convention that a negative instrument should be laid in Parliament at least 21 days before it comes into effect—to ensure the policy can be implemented in practice. Regarding the impact of the ban, Defra told us that, as of 4 January 2024, over 10,000 Certificates of Exemption had been issued for XL Bully type dogs and around 70 completed claims for compensation had been received.

75. We note that Scotland is considering an equivalent ban on XL Bully dogs, and that it would be for the Northern Ireland Assembly, which remains suspended, to legislate for a ban in Northern Ireland. We also note that separate Regulations have been laid to enable penalty notices of up to £5,000 to be issued for certain offences under animal health and dangerous dogs legislation in England.[26]

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24 The ban was introduced by the Dangerous Dogs (Designated Types) (England and Wales) Order 2023 (SI 2023/1164), see: *2nd Report* (Session 2023–24, HL Paper 7).

25 The exemption scheme for individual owners was introduced by the Dangerous Dogs (Compensation and Exemption Schemes) (England and Wales) Order 2023 (SI 2023/1204), see: *4th Report* (Session 2023–24, HL Paper 19).

26 See the Animals (Penalty Notices) (England) Regulations 2023 (SI 2023/1350).

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to affirmative approval

Draft	Animal Welfare (Primate Licences) (England) Regulations 2023
Draft	Carer's Leave Regulations 2024
Draft	Combined Authorities (Mayoral Elections) Order 2017 (Amendment) Regulations 2024
Draft	Combined Authorities (Mayors) Filling of Vacancies Order 2017 (Amendment) Regulations 2024
Draft	East Midlands Combined County Authority Regulations 2024
Draft	European Organization for Astronomical Research in the Southern Hemisphere and the European Space Agency (Immunities and Privileges) (Amendment) Order 2023
Draft	Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2024
Draft	Limited Liability Partnerships (Application of Company Law) Regulations 2024
Draft	Local Government Finance Act 1988 (Prescription of Non-Domestic Rating Multipliers) (England) Regulations 2023
Draft	Magistrates' Courts Act 1980 (Automatic Online Conviction and Standard Statutory Penalty) (Specification of Offences and Penalties) Regulations 2024
Draft	Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024
Draft	Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024
Draft	Occupational Pension Schemes (Collective Money Purchase Schemes) (Amendment) Regulations 2023
Draft	Pneumoconiosis Etc. (Workers' Compensation) (Specified Diseases and Prescribed Occupations) (Amendment) Regulations 2024
Draft	Post Office Network Subsidy Scheme (Amendment) Order 2024
Draft	Principal Office Address (Rectification of Register) Regulations 2024
Draft	Registered Office Address (Rectification of Register) Regulations 2024
Draft	Representation of the People (Postal and Proxy Voting etc.) (Amendment) Regulations 2024
Draft	Sea Fisheries (International Commission for the Conservation of Atlantic Tunas) (Amendment) Regulations 2024

Draft	Service Address (Rectification of Register) Regulations 2024
Draft	Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2024

Made instruments subject to affirmative approval

SI 2023/1314	Iran (Sanctions) Regulations 2023
SI 2023/1364	Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023
SI 2023/1367	Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2023
SI 2023/1397	Civil Procedure (Amendment No. 4) Rules 2023

Draft instruments subject to annulment

Draft	Code of Practice on requests for flexible working
Draft	Dudley (Electoral Changes) Order 2024
Draft	North Northamptonshire (Electoral Changes) Order 2024
Draft	Proposed Consequential Revision of the Code of Practice on Picketing
Draft	Serious Disruption Prevention Orders - Draft Statutory Guidance

Instruments subject to annulment

SI 2023/1328	Flexible Working (Amendment) Regulations 2023
SI 2023/1334	Local Government and Greater London Authority Elections (Amendment) Rules 2023
SI 2023/1350	Animals (Penalty Notices) (England) Regulations 2023
SI 2023/1352	Social Security Additional Payments (Third Qualifying Day) Regulations 2023
SI 2023/1356	Court Funds (Amendment No. 2) Rules 2023
SI 2023/1357	Non-Domestic Rating (Improvement Relief) (England) Regulations 2023
SI 2023/1360	Government Resources and Accounts Act 2000 (Estimates and Accounts) (Amendment) Order 2023
SI 2023/1361	Superannuation (Admission to Schedule 1 to the Superannuation Act 1972) Order 2023
SI 2023/1365	Writtle University College Higher Education Corporation (Dissolution) Order 2023
SI 2023/1371	Money Laundering and Terrorist Financing (Amendment) Regulations 2023
SI 2023/1372	Asylum Support (Amendment) Regulations 2023
SI 2023/1373	Immigration and Asylum (Provision of Services or Facilities) (Amendment) Regulations 2023

SI 2023/1398	Financial Services and Markets Act 2023 (Digital Securities Sandbox) Regulations 2023
SI 2023/1402	Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023
SI 2023/1404	Health and Social Care Act 2008 (Regulated Activities) (Amendment) (No. 2) Regulations 2023
SI 2023/1407	Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) Order 2023
SI 2023/1416	Register of Overseas Entities (Verification and Exceptions) (Amendment) Regulations 2023
SI 2024/33	Dangerous Dogs (Exemption Schemes and Miscellaneous Provisions) (England and Wales) (Amendment) Order 2024

APPENDIX 1: CORRESPONDENCE FROM DFT ON MARITIME LEGISLATION

Letter from Lord Davies of Gower, Parliamentary Under Secretary of State at the Department for Transport, to The Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee

I am writing to inform you of the implementation of amendments to international maritime law into United Kingdom law which take effect on 1 January 2024. These amendments will take effect as a consequence of ambulatory reference provision in existing secondary legislation.

As Parliament is now in recess, we are unable to lay a Written Ministerial Statement until it returns in the New Year, so I am writing to you and the Chair of the Transport Select Committee to ensure you are aware. A Written Ministerial Statement will be tabled in both Houses when Parliament returns in January.

Using ambulatory reference is a key element in keeping United Kingdom law up to date with changes to international maritime instruments by ensuring such changes are automatically incorporated into domestic law. In such cases, the Secretary of State has undertaken to make a Parliamentary Statement to both Houses of Parliament in advance of the amendments taking effect in the UK. I have set out below a summary of the content of the Written Ministerial Statement.

Provision for ambulatory reference is included in certain domestic secondary legislation. The effect of the provision is to make any reference to an international instrument (such as a provision in a convention, or a code forming part of that convention) ambulatory, i.e. a reference to the most up to date version of that provision or code in the international instrument.

Amendments to mandatory requirements in the International Convention for the Safety of Life at Sea, 1974 ("SOLAS") will take effect in UK law on 1 January 2024. SOLAS, a key maritime treaty, is frequently reviewed and amended by the Member States of the International Maritime Organization (IMO) to improve safety and to take account of new technologies. The technical provisions of SOLAS are usually amended to follow a four-year cycle of entry into force.

This letter summarises the amendments which affect five chapters of SOLAS. Full details of the amendments are available on the IMO website and guidance on all the changes being made will be available on www.gov.uk.

SOLAS Chapter II-1 relates to ship construction and makes mandatory the International Code of Safety for Ships using Gases or other Low-Flashpoint Fuels ("the IGF Code"). Changes to the Code include (amongst other things) permitting a higher loading limit for liquefied gas fuel tanks, new requirements for fuel distribution outside of machinery space, improvements to the requirements for explosion relief systems for ships with piston type internal combustion engines, improvements to the requirements for fire protection for fuel storage hold space and a requirement for fuel preparation rooms with potential ignition sources to be provided with a fixed fire-extinguishing system.

Amendments to SOLAS Chapter II-1 have also been made with respect to towing and mooring equipment, vessel stability, subdivision, watertight and weathertight integrity, and stability management to provide requirements for water level detectors specifically for multiple hold cargo ships, other than bulk carriers and tankers.

SOLAS Chapter II-2 contains rules for fire protection, detection and prevention and makes mandatory the International Code for Fire Safety Systems (“the FSS Code”). An amendment has been made to remove the need for costly isolators to be fitted to fire detector units with individually locating detectors on cargo ships and passenger ship cabin balconies.

SOLAS Chapter III makes provision for life-saving appliances and arrangements on ships and gives effect to the International Life-Saving Appliances Code (“the LSA Code”). The LSA Code has been amended to remove the requirement for lifeboats that have two independent propulsion systems to carry oars. The requirement for oars continues to apply to all other lifeboats except free-fall lifeboats. Other amendments include: permitting the launching and recovery of reserve rescue boats on certain types of lighter ships to be made by manual means; removing the requirement for free-fall lifeboats to be capable of being launched and towed when the ship is making headway at a speed of not more than 5 knots in calm water; and changes to davit-launched lifeboats, in relation to the survival craft embarkation and launching arrangements applicable to cargo ships of 20,000 gross tonnage and above.

SOLAS Chapter IV relates to radiocommunications. A comprehensive review of the Global Maritime Distress and Safety System (GMDSS) was undertaken in the IMO to modernise the GMDSS communications, remove obsolete requirements and to update guidance. SOLAS Chapter IV has been revised, with consequential amendments to other SOLAS Chapters, to reflect the IMO’s findings and consolidate the requirements. There is a new obligation for two-way distress alerting radios to automatically include the position of the ship. In the case of malfunction of the source navigation receiver, the position and time of the position fix must be manually updated in the radio at least every four hours.

SOLAS Chapter X gives effect to the High-Speed Craft Codes, 1994 and 2000, which prescribe the standards for construction and operation of commercial high-speed craft such as hovercraft, catamarans and hydrofoils. The requirements for life-saving radiocommunication appliances have been moved within these Codes as a consequence of the decision to move the life- saving radiocommunications requirements from SOLAS Chapter III (life- saving appliances) to SOLAS Chapter IV (radiocommunications).

A copy of this letter will be laid in both Houses’ libraries.

27 December 2023

APPENDIX 2: CORRESPONDENCE WITH DHSC ON FOOD PROMOTION REGULATIONS

Letter from The Rt Hon. Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee, to The Rt Hon. Dame Andrea Leadsom DBE MP, Parliamentary Under Secretary of State at the Department of Health and Social Care.

Thank you for your letter of 18 December 2023 enclosing a revised Explanatory Memorandum (EM) to these Regulations. It will be published, with a commentary, in the Committee's 7th Report of this Session.[27]

While it contains much more information than the first iteration it is still weak in its explanation of the policy rationale for the delay the Regulations implement and the Committee stands by the points made in its 55th Report.

The Committee noted that Tesco and Sainsbury have voluntarily banned multibuy offers for high fat, sugar and salt foods and would like to know how actively the Department is pursuing this approach with other retailers, and why they have not so far adopted the same course.

I should add that the Committee was also particularly concerned about the length of time it has taken for your Department to publish the revised explanatory material, going way beyond the expiry of the prayer period for the instrument. We would normally expect any EM to be replaced within ten days to assist public scrutiny of the Government's legislation.

I am sorry that our first correspondence is on a sour note, but we have also had several very good EMs from your Department in recent months and we too look forward to a constructive relationship with you.

19 December 2023

Letter from The Rt Hon. Dame Andrea Leadsom DBE MP, Parliamentary Under Secretary of State at the Department of Health and Social Care, to The Rt Hon. the Lord Hunt of Wirral MBE, Chair of the Secondary Legislation Scrutiny Committee

Thank you for your letter of 19 December 2023 and for the Committee's careful consideration of the new Explanatory Memorandum in the 7th Report of the 2023/24 session.

I recognise that we were not able to resolve all of the concerns raised by the Committee, but I appreciated that the Committee noted the additional information provided in the new Explanatory Memorandum. I note that Lord Hunt of Kings Heath has since withdrawn his regret motion.

You have asked about voluntary action that may be taken by retailers in relation to promoting less healthy food. Late last year, I wrote to retailers praising the efforts of Tesco and Sainsbury's to voluntarily implement the volume price promotion restrictions. I also encouraged other retailers to consider if this was something they could also do, ahead of the legal commencement date in October 2025. I await their responses with interest.

27 *7th Report* (Session 2023–24, HL Paper 36).

I apologise again for the delay in responding to the 55th Report of the 2022/23 session. Following my recent appointment, I wanted to take the time to consider the Report carefully.

10 January 2024

APPENDIX 3: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at https://members.parliament.uk/members/lords/interests/register-of-lords-interests. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 16 January 2024 and included in this report, Members declared the following interests:

Money Laundering and Terrorist Financing (Amendment) Regulations 2023 (SI 2023/1371)

As Members of the House of Lords, all Members of the Committee could be considered politically exposed persons (PEPs).

Attendance:

The meeting was attended by Lord Hunt of Wirral, Lord Hutton of Furness, Baroness Lea of Lymm, Lord de Mauley, Baroness Randerson, Baroness Ritchie of Downpatrick, Lord Rowlands, Lord Russell of Liverpool and Lord Thomas of Cwmgiedd.